



# NATIONAL ASSOCIATION OF THE DEAF

LAW AND ADVOCACY CENTER

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January 20, 2004

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
Washington, D. C

**Re: In reference to the Ex Parte Letter of December 2, 2003  
by Vonage regarding VoIP**

Dear Ms. Dortch:

The National Association of the Deaf - Telecommunications Advocacy Network ("NAD-TAN") hereby submits its ex parte letter in response to the letter submitted by Swidler Berlin Shereff Freidman on behalf of Vonage holdings Corporation. This letter was submitted concerning issues on Voice over Internet Protocol as well as dockets Nos. 96-45, 94-102, and 01-92.

Sincerely,

Kelby N. Brick, Esq.  
Associate Executive Director for Law and Advocacy

**Before the**

**FEDERAL COMMUNICATIONS COMMISSION**

**Washington, D. C.**

Regarding Voice over IP Issues	)
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	) Docket 96 - 45
	) Docket 94 - 102
	) Docket 01 - 92
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The National Association of the Deaf - Telecommunication Advocacy Network (“NAD-TAN”) hereby submits its ex parte letter in response to the letter submitted by Swidler Berlin Shereff Freidman on behalf of Vonage holdings Corporation. This letter is being submitted concerning issues on Voice over Internet Protocol as well as dockets Nos. 96-45, 94-102, and 01-92.

Established in 1880, the NAD is the oldest and largest consumer-based national advocacy organization safeguarding the civil and accessibility rights of deaf and hard of

hearing individuals in the United States of America. The NAD-TAN is an ad-hoc committee comprised of deaf and hard of hearing leaders from a wide range of professions nationwide. NAD-TAN members possess keen interest in and extensive knowledge with regard to telecommunications access issues faced on a daily basis by deaf and hard of hearing constituents. Further, the NAD-TAN team includes members who are affiliated with national and state associations or agencies that serve the needs of those individuals who are deaf and hard of hearing.

Congress created Title IV of the Americans with Disabilities Act and Section 255 of the Communications Act for the major purpose of ensuring that persons with communication disabilities have functionally equivalent access to telecommunication services or products throughout the USA. Congress wisely drafted these regulations because they knew telecommunication services and products play a vital role in shaping individual, professional and social growth. History indicates that without such statutes and implementing regulations in place, the telecommunications services and product needs of persons with disabilities would not be provided and assured.

In the world of telecommunications, persons with hearing loss clearly are at disadvantage. However, these necessary statutes and implementing regulations helped level the playing field and have enabled persons with telecommunication disabilities to compete more equally, based on their qualifications rather than limitations imposed by the lack of access to telecommunications services and products.

Therefore, the National Association of the Deaf - Telecommunication Advocacy Network (NAD-TAN) is concerned about the “information” category label that Vonage is seeking regarding their provision of telecommunication services over the Internet (i.e. VoIP). By categorizing VoIP as an “information service”, Vonage will be exempt from the obligation to provide access to text telephony (TTY) users using baudot-signaling devices. At present, TTY products are incompatible<sup>1</sup> with the Vonage system and there is no motivation or incentive for the company to make the change or the accommodation. As Government agencies, the business sector and residential settings convert over to VOIP service, TTY users will once again be left behind with no requirement or assurance of compatibility. This will result in persons with telecommunication disabilities paying more for service others will be able to get for much less.

Vonage's request that VoIP be categorized as an "information service" should be modified. The FCC should view VoIP as a telecommunication service; regardless of the fact that VoIP uses packets for transmission, which the FCC determines as "information service”.

VoIP needs to be clearly identified as the telecommunications procedure that it is.

Section 255 of the Communications Act clearly requires any mode of

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<sup>1</sup> As written by Donny Kahalf from Houston, Texas: “I wanted to let you know about an update with Vonage. I previously used Vonage via Cable Modem last year to save the cost of the phone bill. With the regular phone, we pay approx. \$42 a month which does not include free LD call. With Vonage, we pay \$26 a month which has the same features as the regular phone plus free LD call. That is a big gain and advantage. However, it lacks reliability using TDD when calling from Vonage to a TTY user anywhere. Since Vonage is a pure digital format, we decide to ditch Vonage due to lack of reliability with TTY device after 4 months of use. What it means, you can barely ready what other TTY user type to you and the TTY user barely can read what I type to the user. Basically, it was mostly garble and have to repeat several times until they finally get it. This is just a suggestion why Vonage is not a good service for Deaf User.”

telecommunications procedure be fully accessible by persons with disabilities. Therefore, VoIP should be subject to the requirements of Section 255 and made accessible to those using a TTY.

The Internet has proven to be more of an evolution rather than the Vonage contention that ‘Congress was careful to create and codify a regulatory safe-harbor for the Internet and Internet applications. Eight years ago very few people had even heard of VoIP. Contrary to Vonage’s assertion that the Internet is a “delicate ecosystem,” the NAD takes the position that the Internet is a robust and thriving system that can be expected to flourish within a regulated industry.

Unfortunately, the telecommunication needs of persons with hearing and/or speech disabilities typically are the last consideration of new telecommunication services and products. It is conceivable that had the Internet telephone service and products been present and as mature as it is now during formation of the ADA and Section 255 regulations, Congress would have required them to be accessible by all persons with all kinds of disabilities, regardless of the products used. These types of federal statutes and regulations are necessary to require industries to incorporate the needs of the persons with telecommunication disabilities when designing and offering new telecommunication services.

Thus, NAD-TAN is of the opinion that the spirit of these federal statutes and regulations were meant to include Internet telephone services and products as being

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compatible with the established base of baudot TTYs currently used by a majority of Deaf persons.

Vonage expressed concern about restrictions or fees imposed on their services/products, which was noted in their letter addressing issues regarding CALEA, Emergency Services, Universal Services, and Access Charges. These issues are typically best left to the telephone industry and the regulators to work out amongst themselves with evolving platforms constantly attuned to the needs, concerns, and feedback of a variety of communities. However, when it comes to issues regarding accessibility by persons with disabilities, regulations are needed to require industry to ascertain the compatibility for those using specialized CPE such as TTYs. If the regulations are not enforced, it is very likely that industry will put accessibility by persons with disabilities at a low priority, or not consider them at all. More critical to waiver of fee obligations is the fact if more Americans procure VoIP service as their telecommunications means, less revenue will be available to the national TRS Fund. Individuals transitioning away from wireline telecommunications to wireless and Internet access will greatly reduce the available funds to support the current ADA mandated TRS service. The letter submitted by Vonage indicates that they expect an explosive growth of the Voice over Internet Protocol (VoIP) industry. NAD-TAN agrees and strongly urges the FCC to implement appropriate regulations that not only require accessibility by persons with communications disabilities in regards to VoIP, but ensure funding contributions to the existing TRS fund. To do otherwise would leave the deaf and hard of hearing community out of VoIP services and products, just as they were when the plain old

telephone service was first established in the 20<sup>th</sup> century, 100 years ago. It was not until 1990, through the ADA Title IV and later, Section 255 were enacted that the telecommunications field was leveled for individuals with telecommunications disabilities.

In conclusion NAD-TAN strongly encourages the FCC to consider creating a rule or an amendment to Section 255 of the Communications act requiring accessibility by persons with disabilities in regards to VoIP. To do otherwise would leave deaf community out of VoIP services or similar products. Additionally, NAD-TAN respectfully request that the FCC hold public hearings on this issue and incorporate the feedback of a broad representation of the American population, particularly those who are individuals with communication disabilities.

Chairman Michael K Powell recently announced plans to “convene a Solution Summit in which leaders in government and industry can come together to talk about creative ways to address” many of those issues include VoIP. It is essential that disability leaders be involved in this Summit to ensure that disability access is an included element.

The Chairman also stated that he is excited about VoIP because “it empowers people.” This may be true if the Commission ensures that VoIP does not exclude specifically those with disabilities due to lack of access considerations. The Commission has but only one way to address this issue - ensure that individuals with disabilities are not disenfranchised by the lack of access to VoIP. Without appropriate action by the

Commission on this critical issue, the Chairman's vision of "a society where every single American can affordably connect everywhere – giving them more choices and more control" will remain only that—a vision--instead of becoming a reality.

Thank you for the opportunity to submit these comments for your consideration.

Sincerely,

Kelby N. Brick, Esq.

Associate Executive Director for Law and Advocacy

On behalf of NAD-TAN